IN THE

Supreme Court of the United States

October Term, 1975

No. 76-104

COMMUNITY SCHOOL BOARD OF BROOKLYN, NEW YORK DISTRICT No. 14, WILLIAM A. ROGERS in his official capacity as Community Superintendent of District No. 14, et al.,

Petitioners,

—against—

CLAUDE L. HUNTLEY, JR.,

Respondent.

BRIEF FOR RESPONDENT

In Response To

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

NATHANIEL R. JONES
JAMES I. MEYERSON
1790 Broadway
New York, New York 10019
(212) 245-2100

Attorneys for Respondent

THOMAS HOFFMAN
Of Counsel

TABLE OF CONTENTS

TABLE OF CASES

IN THE

Supreme Court of the United States

October Term, 1975

No. 76-104

COMMUNITY SCHOOL BOARD OF BROOKLYN, NEW YORK DISTRICT No. 14, WILLIAM A. ROGERS in his official capacity as Community Superintendent of District No. 14, et al.,

Petitioners,

—against—

CLAUDE L. HUNTLEY, JR.,

Respondent.

BRIEF FOR RESPONDENT

In Response To

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Respondent prays that a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Second Circuit, entered in the above-entitled cause on May 12, 1976, be denied since said judgment is consistent with the applicable decisions of this Court leaving no question of import to be further decided.

Question Presented

Whether the public disclosure of the reasons for the Respondent's discharge, as a public employee, under the circumstances and in view of the substance of the charges

leveled against him, as adduced at the evidentiary hearing herein, so injured the Respondent's interest in his good name, reputation, and his ability to secure future employment in a supervisory position as to entitle him to the due process guarantees of the Fourteenth Amendment to the United States Constitution.

Statement of the Case

In order to fully understand why the judgment of the Second Circuit in this matter is consistent with previous decisions of this Court and leaves no question of further import to be decided, it is imperative that a full and complete statement of the evidence be set forth since it is only in the context of a detailed factual analysis that the propriety of the judgment can be understood. In order to avoid any misunderstanding of the facts herein, as presented in the Petitioners' Statement of the Case, Respondent believes the following should be added.

The Respondent is a Black American citizen who possesses over twenty years of teaching and administrative experience, substantial portions of which were spent in the New York City School District. See: Transcript of trial proceedings at pages 3-4 as set forth in Appellant's Appendix in the Court of Appeals. See also: Exhibit 1 therein at pages 823-825. From July, 1970 through June 5, 1973, the Respondent was employed by the New York City School District as acting principal of Intermediate School #33 in Brooklyn, New York Community School District #14 which is an entity within and part of the larger New York City School District. See: Testimony at page 167 of Appellant's Appendix in the Court of Appeals.

He was the first person of his race to hold the position of principal in Community School District #14 or the schools which otherwise comprise Community School District #14, said District having just recently been created under the decentralization law of the State of New York. He was hired as principal because, among other reasons, he is a Black person and pursuant to an affirmative action effort undertaken by the Community School Board #14. See: Testimony at pages 601-605; 612 of Appellant's Appendix in the Court of Appeals. On June 5, 1973, just prior to the close of the 1972-1973 school year, the Respondent was fired from his job. He is presently employed by the New York City School District as a *teacher,* a position different in nature than the *supervisory* position which he held at a special school in the New York City School District, prior to assuming his position in District #14.

At the end of each of his first two years in his position as acting principal the Respondent received satisfactory ratings for the performance of his duties. See: Exhibit 2 at pages 825-828 of Appellant's Appendix in the Court of Appeals.

On May 25, 1973, only approximately one month prior to the close of the academic school year, the Respondent appeared before the Community School Board to discuss a proposed reorganization of Intermediate School #33 of which he was principal. At that meeting no mention whatsoever was made of his pending termination; and not one individual Board member questioned him about the alleged "misconduct" for which he would ostensibly be terminated. See: Testimony at pages 221-222 of Appellant's Appendix in the Court of Appeals. See also: Testimony at pages 338-340 of Appellant's Appendix in the Court of Appeals.

Immediately after he left the meeting at which he discussed the reorganization of his school, one of the Board members moved to fire the Respondent from his job. The motion was seconded over the objection of the lone minority Board member at the meeting who was the Board liaison, as well, to Intermediate School #33 and who had never, himself, been informed of the proposed action.

The minority member and Board liaison to Intermediate School #33 indicated that the Superintendent had not preferred formal charges against the Respondent, as was the normal procedure; and that the entire effort to fire the Respondent at that time was out of order.

Over his objection and after the foregoing transpired, a Community Board member asked Petitioner Rogers if he wanted to recommend the Respondent's termination; and Petitioner Rogers did so, orally, a procedure never before utilized to fire an employee.

Eventually, the Respondent was terminated at the executive session of the Board, with the lone minority member thereat refusing to vote for said termination. See: Testimony at pages 338-344 of the Appellant's Appendix in the Court below.

When the Respondent was notified of his termination, he appealed the action of the Community School Board, administratively, alleging that his termination, without a resolution at a public meeting, was illegal and void. His appeal was sustained; and the Chancellor of the New York City School District ordered the Community School Board *to vote* upon the termination at a public meeting (otherwise ratify the action, previously taken, by and through a resolution) rather than at a closed meeting as had been done. See: Testimony at pages 223-227 of Appellant's Appendix in the Court of Appeals.

Thereafter, on extremely short notice, the Community School Board scheduled a *special* public meeting for June 5, 1973, only approximately three weeks prior to the close of school and prior to the time when notifications and ratings are normally given. Petitioner Rogers formally submitted charges against the Respondent in the form of a letter (See Exhibit 1 at page 12 of the Appellant's Appendix in the Court of Appeals). The Respondent never received a copy of said charges and only found out about the same through a Board member, Leroy Fredericks, who had received a copy of the letter as a Board member and had advised Respondent Huntley of its contents.

At a specially held *public* meeting, the letter was read in its entirety. Hundreds of people were in attendance. Thereafter, a confused vote was taken; and, ostensibly, the Respondent was terminated with Mr. Fredericks voting against the same (See: Testimony of Respondent at pages 227-228 of Appellant's Appendix in the Court of Appeals. See also: Testimony of Caroline Hupe at pages 386-387 of Appellant's Appendix in the Court of Appeals.

As a consequence of this public spectacle, the Respondent was ridiculed and embarrassed; and was the victim of a public stigmatization (See: Testimony of Caroline Hupe, *supra*).

Interestingly and significantly, a non tenured, white, probationary teacher was terminated from his position early in the 1971-1972 academic year as a consequence of his failure to appear for his duties until substantially after the school year had commenced. The teacher, himself, was under the jurisdiction of the Respondent. He was given an option to resign rather than to be formally terminated; and, more significantly, it was determined, as a matter of policy by the Community School Board, that the

resolution of his termination was not to be published on the public agenda of the Community School Board meeting and that the agenda should simply read that the Community School Board consider a resolution for dismissal of a probationary teacher. Neither the actual resolution or the teacher's name were printed (See: Exhibit 34 in Record. See also: Testimony at pages 710-712; 723-726 of Appellant's Appendix in the Court of Appeals).

There can be no doubt that not only was the Respondent treated differently than a similarly situated white professional employed by the Petitioners but that the process utilized in terminating the Respondent was contrary to the procedure previously agreed upon by the Community School Board with respect to said similarly situated employee. The only conclusion that one can reasonably come to is that the process utilized by the Petitioners was designed to and had the actual effect of ridiculing and stigmatizing the Respondent. As such, the process, including but not limited to the public disclosure of pervasive damning and stigmatizing charges, was so morally and otherwise defective that it infringed upon both the Respondent's liberty[1] and property[2] interests in violation of his constitutional rights as guaranteed by the Due

[1] The liberty interest, of course, revolves around the stigmatization and ridicule which befell the Respondent as a consequence of the public display which he was subjected to through the afore-described process and the debilitating effect of the same on his ability to secure future employment in a supervisory capacity.

[2] The property interest is statutorily created pursuant to th Civil Rights Act of 1871 (42 U.S.C. §1981), which was jurisdictionally pled (See: Complaint at pages 6-7 of Appellant's Appendix in the Court of Appeals) and which guarantees Black Americans the same rights in property and penalty, punishment and pain relative thereto as white American citizens, something which was clearly not accorded the Respondent if he is compared to the white probationary employee who was differently treated under similar circumstances.

Process Clause of the Fourteenth Amendment to the United States Constitution, thereby calling " . . . into play the Roth and Constantineau[3] requirements". See: *Buggs* v. *City of Minneapolis*, 358 F. Supp. 1340, 1343 (D. C. Minn. 1973).

Reasons for Denying the Writ

In *Anti-Facist Committee* v. *McGrath*, 341 U.S. 123, 168, 71 S. Ct. 624, 95 L. Ed. 817, 852 (1951), Justice Frankfurter, in an opinion in which he concurred in the holding of the majority of this Court, noted:

> "[T]he right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society."

Thereafter the Court, from which the judgment herein challenged eminates, held that, while "public employees . . . have no absolute right to a hearing on discharge from public employment . . .", nevertheless ". . . courts have become more inclined to consider the methods and procedures by which a dismissal is effected as it may bear upon reputation and the opportunity for employment thereafter"; and it concluded in that case ". . . that, in the circumstances surrounding Dr. Birnbaum's removal from office, more was involved than merely the loss of the privilege of public employment". See: *Birnbaum* v. *Trussell*, 371 F. 2d 672, 677 (2nd Cir. 1966). See also: *Whitney* v. *Board of Regents*, 355 F. Supp. 321 (E.D. Wis. 1973); *Wellner* v. *Minnesota State Junior College Board*, 487

[3] See: *Board of Regents* v. *Roth*, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972); *Wisconsin* v. *Constantineau*, 400 U.S. 433, 91 S. Ct. 507, 27 L. Ed. 2d 515 (1971).

F. 2d 153 (8th Cir. 1973); *Meredith* v. *Allen County War Memorial Hospital Commission,* 397 F. 2d 33 (6th Cir. 1968); *Morris* v. *Board of Education of Laurel School District,* 401 F. Supp. 188, 210-211 (D.C. Delaware 1975).

Following this same vein, the majority of this Court held in *Wisconsin* v. *Constantineau,* 400 U.S. 433, 437, 91 S. Ct. 507, 27 L. Ed. 2d 515, 519 (1971) that:

> "Where a person's good name, reputation, honor, or integrity is at state because of what the government is doing to him, notice and an opportunity to be heard are essential. 'Posting' under the Wisconsin Act may to some be merely the mark of illness, to others it is a stigma, an official branding of a person. The label is a degrading one. Under the Wisconsin Act, a resident of Hartford is given no process at all. *This appellee was not afforded a chance to defend herself. She may have been the victim of an official's caprice. Only when the whole proceedings leading to the pinning of an unsavory label on a person are aired can oppressive results be prevented.*" (Emphasis added).

In reaffirming its *Constantineau* principle and amplifying upon the same this Court more recently stated:

> "*The State, in declining to rehire the respondent, did not make any charge against him that might seriously damage his standing and associations in his community. It did not base the nonrenewal of this contract on a charge, for example, that he had been guilty of dishonesty or immorality. Had it done so, this would be a different case, for '[w]here a person's good name, reputation, honor, or integrity is at state because of what the government is doing to him, notice and an opportunity to be heard are essential.'* Wisconsin v. Constantineau, 400 U.S. 433, 437, 91 S. Ct. 501, 510,

> 27 L.Ed.2d 515; . . . [other citations omitted]." (Emphasis added).

Board of Regents v. *Roth,* 408 U.S. 564, 573, 92 S.Ct. 2701, 33 L. Ed. 2d 548, 558 (1972).

Most recently, this Court has further clarified its position in this respect, See: *Paul* v. *Davis,* —— U.S. ——, 96 S.Ct. —, 47 L. Ed. 2d 405 (1976); *Bishop* v. *Woods,* 44 USLW 4820, June 10, 1976; and, notwithstanding the Petitioners' assertion that the judgment of the Court below is inconsistent with these most recent clarifications concerning the right to constitutionally guaranteed due process, Respondent submits that the judgment below is wholly justified by these decisions and is clearly consistent therewith.[4]

---

[4] In addition to the three decisions of this Court referred to by the Petitioners in support of their application herein *(Board of Regents* v. *Roth, supra, Paul* v. *Davis, supra,* and *Bishop* v. *Wood, supra),* they cite several Circuit Court decisions as well. It is submitted, however, that, as with this Court's decisions, the cited Circuit Court decisions are consistent in principle with the judgment of the Court below. To the extent that the Circuit Court decisions hold contrary to the judgment of the Court herein (as with the case of this Court's decisions), such is a consequence of the difference in factual circumstances between the cited cases and the instant litigation.

Thus, in *Brouillette* v. *Board of Directors of Merged Area IX, etc.,* 519 F. 2d 126, 127-128 (8th Cir. 1975), the Circuit Court of Appeals for the Eighth Circuit, citing *Board of Regents* v. *Roth, supra,* as precedent, noted:

> ". . . that a teacher's interest in liberty is sufficiently affected to invoke the protections of procedural due process when the threatened termination is the result of a charge which will place a stigma upon him and impair his ability to obtain new employment. Roth, supra, 408 U.S. at 573, 92 S.Ct. 2701; Buhr v. Buffalo Public Sch. Dist., 509 F.2d 1196, 1199 (8th Cir. 1974); see also Freeman v. Gould, Special Sch. Dist., 405 F.2d 1153, 1161-67 (8th Cir. 1969) (dissenting opinion).

It held, however, in the context of the developed evidence in that particular case that:

> "*The allegations of inadequacy against the plaintiff were relatively minor,* (e.g., tardiness, inability to maintain order,

The Respondent herein claims, that, in the context of his termination from public employment, charges, which

---

etc.) and not, we believe, of the sort that would seriously impair his ability to obtain future employment. See Scheelhaase, supra, at 242. *Moreover, the board declined to make them public.* See Buhr, supra, at 1199. We find no deprivation of liberty here and conclude that plaintiff was not entitled to the protections of procedural due process guaranteed by the constitution." (Emphasis added).

Id. at page 128. See also: *LaBorde* v. *Franklin Parish School Board*, 510 F. 2d 590, 593 (5th Cir. 1975) where the Fifth Circuit Court of Appeals noted that:

"The superintendent stated that all of his actions and those by the board were taken with maximum circumspection to Mrs. LaBorde's rights of privacy. He communicated only to her and submitted his recommendations only to the board.

• • •

None of the charges were made public by school officials. The brief mention in the local paper that her contract had not been renewed did not impugn Mrs. LaBorde's good name, honor or integrity. Under Roth's standards, her 'liberty' claim was properly denied." (Emphasis added).

and *Buhr* v. *Buffalo Public School District # 38*, 509 F. 2d 1196, 1199 (8th Cir. 1974) where the Court therein held:

"We cannot accept this argument under the factual circumstances of this particular case. Clearly, nonrenewal standing alone does not constitute the deprivation of an interest in liberty. Roth, supra, 408 U.S. at 574 n. 13, 92 S.Ct. 2701; Arnett v. Kennedy, supra 416 U.S. at 157, 94 S.Ct. 1633; Calvin v. Rupp, 471 F.2d 1346 (8th Cir. 1973). On the other hand, where reasons for nonrenewal are announced publicly or are incorporated into a record made available to prospective employers, such reasons may indeed affect the dischargee's chances of securing another job. See Wellner v. Minnesota State Junior College Board, 487 F. 2d 153 (8th Cir. 1973); cf. Wisconsin v. Constantineau, 400 U.S. 433, 437, 91 S. Ct. 507, 27 L.Ed. 2d 515 (1971). *In the instant case, the reasons for nonrenewal were never publicized.* Ms. *Buhr was confidentially informed of the reasons only upon her request and then only at a closed meeting of the school board.* The confidential nature of these charges was respected even during the trial court proceedings, and we note that Judge Benson made no explicit reference thereto in his summary judgment order and memorandum. See 364 F. Supp. at 1228 n. 1. We fail to discover any suggestion in the undisputed facts contained in the record that the defendants prejudiced Ms. Buhr's ability to secure another teaching position." (Emphasis added).

Moreover, *Shirck* v. *Thomas*, 486 F. 2d 691, 693 (7th Cir. 1973), *Adams* v. *Walker*, 492 F. 2nd 1003 (7th Cir. 1974), *Scheelhaase* v. *Woodbury Community School District*, 488 F. 2d 237 (8th Cir. 1973), *cert. denied*, 417 U.S. 969, 94 S. Ct. 3173, 41 L. Ed. 2d 1140 (1974) and *Stretten* v. *Wadsworth Veterans Hospital*, —— F. 2d —— (9th Cir. May 18, 1976) are factually distinguishable from the instant case (thus differentiating between their judgments and the judgment of the Court below); while at the same time they are totally consistent in principle with the holding below.

were leveled at him as justification for his firing and which bore and continue to bear significantly on his reputation and ability to secure employment in a supervisory position similar to the one he held prior to his termination, were publicly disclosed without allowing him the opportunity, in advance, to have a hearing whereat he could respond to the same and defend himself.

In *Paul* v. *Davis, supra,* this Court noted that the interest sought to be protected therein was the individual's reputation, alone, and nothing more; and that the interest in reputation, alone, and without more, did not give rise to either a liberty or property interest safeguarded by the Due Process Clause of the Fourteenth Amendment.

This Court, citing *Board of Regents* v. *Roth, supra,* noted in *Paul* v. *Davis, supra,* that, in order to raise ones interest in reputation to a constitutionally protected liberty interest, the defamation to ones reputation "had to occur in the course of the termination of employment." 47 L.Ed.2d at page 419.

Having analyzed *Paul* v. *Davis, supra,* and other precedents of this Court, the Court below, citing from *Paul, supra,* and noting that this Court was itself citing from its earlier decision in *Board of Regents* v. *Roth, supra,* concluded that, in declining to re-employ the Respondent

herein, the Petitioners imposed upon him a stigma, through the public disclosure of the extensive charges leveled against him, which foreclosed him from taking advantage of other supervisory employment opportunities; and, that, accordingly, he should have been accorded a hearing, prior to the publication, in order to give him an opportunity to respond to said charges and otherwise defend himself.

Bishop v. *Wood, supra,* the other of this Court's most recent pronouncements in this area, clearly supports the same conclusion. In *Bishop* v. *Wood, supra,* a police officer was fired without a prior hearing respecting the charges leveled against him as justification for this termination.

This Court noted that, as a matter of fact, the charges were communicated to the employee in private and were not made public except through the litigation which followed and in which the due process claim by the employee was asserted. This Court wrote:

> "In Board of Regents v. Roth, 408 U.S. 564, we recognized that the non retention of an untenured college teacher might make him somewhat less attractive to other employers, but nevertheless concluded that it would stretch the concept too far 'to suggest that a person is deprived of 'liberty' when he simply is not retained in one position but remains as free as before to seek another.' Id., at 575. This same conclusion applies to the discharge of a public employee whose position is terminable at the will of the employer when there is no public disclosure of the reasons for the discharge."

Continuing, this Court, noting its previous precedents in *Wisconsin* v. *Constantineau, supra,* and *Paul* v. *Davis, supra,* concluded:

> "In this case the asserted reasons for the City Manager's decision were communicated orally to the petitioner in private and also were stated in writing in answer to interrogatories after this litigation commenced. *Since the former communication was not made public, it cannot properly form the basis for a claim that petitioner's interest in his 'good name, reputation, honesty, or integrity' was thereby impaired.*" (Footnote omitted) (Emphasis added).

Thus, acknowledging these precedents and the principles enunciated therein, applying the same to the facts at hand, and doing nothing more or less than what is required by this Court's decisions, the Court below, from whose judgment the Petitioners seek review, held that the Petitioners, in publicly disclosing the reasons for the Respondents separation from his supervisory position at the time and in the manner done and in view of the charges leveled, "imposed upon [the Respondent] a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities", See: *Paul* v. *Davis,* 47 L.Ed.2d at page 419, citing *Board of Regents* v. *Roth, supra* at page 573, thus requiring that he be given a fair hearing prior to said publication in order to allow the Respondent to respond to the charges and otherwise defend himself.

The Court below, following the precedent of this Court, held that being publicly branded, among other things, as an "ineffective" and "uncommunicative" administrator and a principal who "has failed to maintain a reasonably functional educational plant that is conducive to an effective learning environment", at the time and in the manner he was, placed on the Respondent a badge of inferiority and incompetence which "drastically impaired" his ability to pursue a livelihood as a principal or other supervisor in

the New York City School District or elsewhere. It found the publicly disclosed charges against the Respondent so pervasive, damning, and stigmatizing to "call into play the Roth and Constantineau requirements." See: *Buggs* v. *City of Minneapolis, supra* at pages 1342-1343. See also: *McNeil* v. *Butz*, 480 F.2d 314 (4th Cir. 1973).

It is important to direct this Court's attention to the content of the letter of June 1, 1973 which was disclosed at a public meeting on June 5, 1973 (the content of the charges is set forth at pages 6-8 of the Petitioners' Brief).

Said letter, which requests the removal of the Respondent from his position as acting principal, is replete with references to Respondent's conduct in his official capacity. Respondent is accused, among other things, of failing "to effectively deal with the educational program at I.S. 33", failing "to implement an effective educational program", failing to provide "for the basic safety of the children and staff of the school", failing "to maintain a reasonably functional educational plant conducive to an effective learning environment", failing "to resolve problems that occurred in the administration and supervision of the school", failing "to anticipate problems and implement action that would provide a reasonable instructional atmosphere", and failing "to utilize the additional resources that were provided to create an effective school program".

The charges state that the Respondent did not communicate as an educational and administrative leader, did not provide a viable educational program, was ineffective in implementing recommendations and suggestions to improve the educational climate of the school, and demonstrated an inability to provide the necessary leadership in working with a staff of professional teachers and supervisors.

As a result, the charges state that the school situation has "rapidly deteriorated," the leadership of the Respondent "has created a climate of confusion and discontent in the school" and "the educational climate of the school is now one of general disorder thus depriving many children of a proper and effective learning situation."

It is hard to imagine charges that could be more devastating to a school administrator's career than those set forth in the letter written by Petitioner Rogers about the Respondent, and, in fact, read, at the time and in the manner it was, at a public meeting.

It is obvious that the impression conveyed by and through the public disclosure of the charges was that the Respondent had been personally responsible for a situation bordering on chaos and anarchy. It hardly can be argued that the Respondent has not been fatally stigmatized in the eyes of any future prospective employer who might view the letter as well as in the eyes of the hundreds of people who publicly heard the charges disclosed. Accordingly, the letter must be viewed as effectively foreclosing the Respondent from any potential supervisory job opportunity with the City School District or otherwise which he might seek.

Virtually every sentence in the letter, written by Petitioner Rogers about Respondent Huntley and publicly read at the time and in the manner it was, is spiked with damning statements which reflect negatively not only upon every aspect of the Respondent's duties and responsibilities, as a school principal, but as a person as well. Of particularly damaging content is the charge, as if fact, that the Respondent had engaged in conduct (whether negligently or intentionally) which endangered "the basic safety" of school children and the staff of the school.

The Respondent, in effect, was charged, as if fact, with criminal conduct. See: Reckless Endangerment, New York Public Law, §122.20; and Official Misconduct, New York Public Law §195.00. Surely such charges have permanently ruined any chance the Respondent might foreseeably have had to obtain another position as a principal. It is this sort of "arbitrary vilification" which the Fourteenth Amendment is designed to protect against. See: *Boulware* v. *Battaglia,* 327 F. Supp. 368 (D.C. Del. 1971).

Petitioners seem to assert, moreover, that, even if the Court below was correct in finding stigmatization, as a matter of fact, nevertheless it was in error in requiring a due process hearing, prior to the disclosure of the charges leveled against the Respondent, since the Respondent did not establish as a matter of fact that his career was adversely affected through the stigmatization attendant to the nature and manner of his termination. They point out that, in fact, the Respondent has been employed "within his profession" for the last two years and that such rebuts any inference of damage to the contrary. See: Petitioners Brief at pages 18-19.

Speaking to the latter point, the Court below observed, it is submitted correctly, that, while it is true that the Respondent is presently employed as a teacher within the New York City School District (as he has been employed therein for a substantial period of time prior to his assuming the acting principal's position from which he was fired), nevertheless there is a significant difference between a teaching position and a supervisory position.

That the Respondent is still free to pursue a teaching profession can be of little solace to this highly qualified and aspiring individual; and the Court below correctly rejected the same as a defense to the due process claim in accordance with the precedent of this Court. See: *Wie-*

man v. *Updegraff,* 344 U.S. 183, 73 S. Ct. 215, 97 L. Ed. 216 (1952) where this Court took judicial notice of the career injury attendant to the stigma of "disloyalty" without finding the same, in fact. See also: *Suarez* v. *Weaver,* 484 F. 2d 678, 680 (7th Cir. 1973), citing *Updegraff, supra,* in this regard; *Goss* v. *Lopez,* 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975); *Arnette* v. *Kennedy,* 416 U.S. 134, 157, 94 S.Ct. 1633, 40 L.Ed.2d 15 (1974).

Moreover and not insignificantly the evidence herein, rather than a supposition, establishes injury in fact. Since the Respondent's termination as principal of Intermediate School # 33 in Brooklyn, New York School District # 14, he sought, on three occasions, to obtain three similar positions; and on all three occasions he was rejected for the same (See: Paragraph 31 (a) in Plaintiff's Affidavit at page 816 of the Appellant's Appendix in the Court of Appeals). It must reasonably, though tragically, be concluded that, as a matter of fact, the Respondent herein has been and will continue to be foreclosed forever from pursuing his chosen profession and attaining his lot in life. That such is attributable to the less than "facially neutral" termination cannot be disputed; and as such the Respondent has acquired "the type of stigma . . . which *Roth* contemplated would deprive a discharged untenured employee of liberty." *McNeill* v. *Butz, supra* at page 320. See also: *Birnbaum* v. *Trussell, supra.*

As such, the Court below was clearly justified in holding as it did; and its failure to do so would have otherwise been in direct circumvention and violation of the precedents of this Court, including its most recent pronouncements in this regard.

CONCLUSION

In view of the foregoing, the Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit should be denied.

July 30, 1976.

Respectfully submitted,

.....

NATHANIEL R. JONES
JAMES I. MEYERSON
1790 Broadway
New York, New York 10019
(212) 245-2100

Attorneys for Respondent

By: /s/ NATHANIEL R. JONES

THOMAS HOFFMAN
Of Counsel

Certificate of Service

James I. Meyerson, one of the attorneys for the Respondent herein, certifies that on the 30th day of July, 1976, I did serve three (3) copies of the foregoing upon the attorneys for the Petitioners by mailing the same to them, postage prepaid, first class, as follows: Office of the Corporation Counsel, City of New York, Municipal Building—16th Floor, New York, New York 10007 ATTENTION: Leonard Koerner, Esq.

Respectfully submitted,

.....

Nathaniel R. Jones
James I. Meyerson
1790 Broadway
New York, New York 10019
(212) 245-2100

Attorneys for Respondent

By: /s/ James I. Meyerson

THOMAS HOFFMAN
Of Counsel